

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL LABOR RELATIONS BOARD,

Applicant,

v.

ARNOLD WALTER NURSING &
REHABILITATION CENTER,

Respondent.

Civil Action No. 21-2954 (MAS) (DEA)

MEMORANDUM ORDER

This matter comes before the Court on Applicant National Labor Relations Board’s (“Applicant”) Motion to enforce its subpoena served on Respondent Arnold Walter Nursing & Rehabilitation Center (“Respondent”). (ECF No. 1.) According to Applicant, Respondent has not complied with Applicant’s subpoena, which seeks non-privileged documents as part of an investigation into Respondent’s unfair labor practices. (Applicant’s Br. 7-8, ECF No. 1-3.) Specifically, Applicant’s subpoena seeks documents relevant to Respondent’s compliance with a May 23, 2019 Third Circuit judgment that ordered Respondent to cease and desist from its unfair labor practices and take certain affirmative actions to correct those practices. (See Applicant’s Mot. Ex. B, Third Circuit Judgment *7-8, ECF No. 1-1.)¹ The subpoena also seeks documents related to an October 29, 2020 non-party deposition regarding Respondent’s compliance with the Third Circuit judgment (the “October Deposition”). (See Applicant’s Mot. Ex. H, Subpoena *35, ECF No. 1-1.) Respondent has not opposed Applicant’s Motion.

¹ Record citation pin-cites with an asterisk indicate the page number in the CM/ECF header.

This Court has subject matter jurisdiction to decide this matter. *See* 29 U.S.C. § 161(2) (noting that district court “shall have jurisdiction” for “refusal to obey” NLRB subpoenas); *NLRB v. Interstate Dress Carriers, Inc.*, 610 F.2d 99, 111 (3d Cir. 1979) (“As with other administrative agencies, Congress has given the [NLRB] subpoena power, but, in § 11(2) of the NLRA, has relegated it to resort to the district courts for enforcement.”). The Court can also dispose of Applicant’s Motion in summary fashion. *See Interstate Dress Carriers, Inc.*, 610 F.2d at 112; *NLRB v. Frazier*, 966 F.2d 812, 817 (3d Cir. 1992) (“The proceeding to enforce an agency subpoena is like a motion to dismiss; once the court grants a motion to dismiss or compels compliance with a subpoena, the court disposes of the entire case before it.”).

The Court reviews enforcement of Applicant’s subpoena by assessing four factors: “that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry is relevant, that the information demanded is not already within the agency’s possession, and that the administrative steps required by the statute have been followed.” *FDIC v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995).

First, Applicant’s subpoena is for the legitimate purpose of investigating whether Respondent complied with a Third Circuit judgment—which in turn is part of a broader investigation assessing whether Respondent engaged in unfair labor practices. *See NLRB v. Jo-Dan Madalisse Ltd.*, No. 15-228, 2015 WL 9302922, at *3 (E.D. Pa. Dec. 22, 2015) (“[T]he NLRB is seeking information as part of its investigation of unfair labor practice charges, a legitimate area of inquiry for the agency.”).

Second, Applicant’s subpoena is relevant, seeking “correspondence among Arnold Walter agents regarding compliance with the Third Circuit’s judgment,” documents referenced at the follow-up October Deposition, and documents reviewed in preparation for the October Deposition.

(Subpoena *35; *United States v. O'Neill*, 619 F.2d 222, 228 (3d Cir. 1980) (“Courts traditionally give wide latitude in determining relevance in the context of an administrative subpoena.” (citations omitted)).)

Third, the information sought in Applicant’s subpoena is not within its possession as the subpoena seeks documents exclusively from Respondent’s agents. (See Subpoena *35.)

Finally, Applicant has complied with statutory procedure by serving Respondent by certified mail. (See Applicant’s Mot. Ex. L, USPS Tracking *48, ECF No. 1-1; 29 U.S.C. § 161(4) (mandating service by, among other methods, certified mail).)

IT IS THEREFORE, on this 8th day of September 2021, **ORDERED** as follows:

1. Applicant’s Motion to Enforce (ECF No. 1) is **GRANTED**.
2. The Clerk of the Court shall close this matter.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE